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DATE: September 23, 2002

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1.	Examiner Carolyn Paden Group Art: 1761	USPTO Washington, DC	703-305-7718	

Total number of pages including this page: 4

COMMENTS

Re: U.S. Patent Application of Shanta NALUR et al.
Application No. 09/729,693; Filed: December 6, 2000
For: FOOD PRODUCTS CONTAINING HIGH MELTING
EMULSIFIERS

Please see attached Response to Communication.

Allan Fanucci

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#13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Shanta NALUR et al.

Application No.: 09/729,693

Filed: December 6, 2000

For: FOOD PRODUCTS CONTAINING
HIGH MELTING EMULSIFIERS

Group Art Unit: 1761

Examiner: Carolyn PADEN

Attorney Docket No.: 88265-366

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RESPONSE TO COMMUNICATIONAssistant Commissioner for Patents
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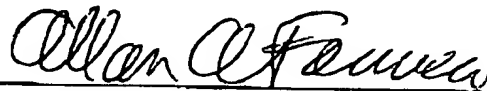
Sir:

This is a response to the communication dated September 13, 2002, which commented on applicants' amendment that was filed to answer the Office Action dated July 24, 2002.

It is submitted that the communication is in error for a number of reasons. First of all, the communication mentions Rule 129(a), a rule that is inapplicable to the present situation. It also mentions an appeal, a situation that is also inapplicable since the prior amendment was submitted in response to a non-final office action. Furthermore, the previous amendment did not specifically address certain prior art references because the claims that were presented in that amendment had not been rejected over those references. Applicants traverse.

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Allan A. Fanucci (Reg. No. 30,256)

In the prior office action, only claims 1, 9, 11-14 and 20 were rejected over the Krawczyk patent. However, claims 16, 21, and 26 were objected to as being dependent upon a rejected base claim but were indicated as being allowable if re-written in independent form. In response to that indication, applicants amended claim 1 to recite the features of claim 21, amended claim 9 to recite the features of claim 26, and amended claim 13 to recite the features of claim 16. As claims 13, 21 and 26 were not rejected over Krawczyk, no comment as to that reference was required for those claims. Instead, applicants in effect simply prepared those claims in independent form so that they could be allowed as indicated in the office action. Furthermore, since claims 11, 12, 14 and 20 depended from independent claims 9, 9, 13 and 1, respectively, no comment was believed to have been needed for those claims as they were also considered to be in condition for allowance.

Furthermore, Krawczyk is not material to the patentability of the amended claims for the reasons set forth in applicants' amendment of June 17, 2002. As explained therein, Krawczyk teaches a reduced caloric confection using a particular a microcrystalline cellulose/sorbitan monostearate composite. This is not an emulsifier of a sorbitan ester as claimed by applicants. Furthermore, this composite does not have the presently claimed melting point. Krawczyk teaches that a temperature of 71C is necessary to assure that all components are melted, but he does not teach what the melting point of his emulsifier is. For these reasons, one of ordinary skill in the art is not motivated or taught how to achieve the present invention as defined in independent claims 1, 9, and 13, as amended. Thus, those claims are patentably distinct from Krawczyk.

The communication also states that a complete reply to the prior rejection based on the combination of Varvil and Gunstone has not been addressed. Applicants again traverse.

In the previous non-final office action, only claims 3, 14 and 19 were rejected over this combination of references. As noted above, claim 13 was amended to include the features of claim 16, a claim that was indicated as being allowable and one that was not rejected over this combination of references. Also, claims 14 and 19 depended from claim 13. Accordingly, no comment was believed to have been needed for those claims.

Furthermore, Varvil and Gunstone are not material to the patentability of amended claim 13 for the reasons set forth in applicants' amendment of June 17, 2002. As explained therein, those references do not teach or disclose a food product that contains a liquid oil in an amount of 10 to 60 weight percent or an emulsifier in an amount of 0.5 to 15 percent by

weight. For this reason, one of ordinary skill in the art is not motivated or taught how to achieve the present invention as defined in independent claim 13, as amended. Thus, that claims and all claims dependent from it are patentably distinct from the combination of Varvil and Gunstone.

In view of the comments above, Applicants' respectfully request that all rejections have been overcome and should be removed so that the claims can be promptly allowed. If any issues remain in connection with the previous rejections, the Examiner is invited to telephone the undersigned to discuss and resolve them.

No fees are believed to be due for the submission of this response. Should any fees be required, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Date:

9/23/02

Respectfully submitted,


Allan A. Fanucci 30,256
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